IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 571 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJAY @ ASIYO KASTURBHAI DANTANI THRO' HIS MOTHER

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 571 of 2001

MR CB DASTOOR for Petitioner No. 1

MR S.S.PATEL, APP for Respondents No. 1,3

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/10/2001

ORAL JUDGEMENT

#. In this petition filed under Article-226 of the

Constitution of India, the petitioner has challenged the order dated March 23, 2001 (Annexure-'C' to the petition) passed by the externing Authority i.e. Deputy Police Commissioner, Zone-II, Ahmedabad City by which he has externed the petitioner for a period of two years from five districts i.e. Ahmedabad Rural, Ahmedabad City, Kheda, Gandhinagar and Mehsana and also the order dated May 22, 2001 (Annexure-'E' to the petition) passed by the appellate Authority confirming the said order and prayed to issue a writ, order or direction quashing and setting aside both the above orders.

#. A show-cause notice dated August 16, 2000 under sec.59 of the Bombay Police Act was issued to the petitioner, wherein, several allegations were made against him to the effect that he is a strong headed quarrelsome and aggressive person who has no fear of law and order, picking up quarrel with people and give threats to kill them, continues his anti social activities by which he is causing physical and financial damage to the people and the people are afraid of filing complaint against him. The petitioner is extorting money from the traders by showing knife, threatening the tenant on behalf of landlord by taking supari from them. Therefore, the activities carried out by him are detrimental for maintenance of public order. Therefore, by issuing a show-cause notice the petitioner was called upon to show cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgment.

#. The petitioner gave reply to the said show-cause notice on September 25, 2000 and March 1, 2001. The externing Authority, after considering the material on record, passed the impugned order of externment dated March 23, 2001 in exercise of the powers conferred under sec.56-B of the Act externing the petitioner for a period of two years from the above mentioned districts.

#. Aggrieved by the aforesaid order passed by the externing Authority, the petitioner preferred an appeal before the appellate Authority, which was dismissed by the appellate Authority vide order dated May 22, 2001 which has given rise to the present petition.

#. Mr.C.B.Dastoor, learned advocate for the petitioner raised several contentions and tried to convince this Court to the effect that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. To bring home his aforesaid submission, he drew the attention of this Court that the

order passed by the appellate authority indicates that the copy of the FIR was also perused but in fact there is no FIR lodged against the petitioner. Besides this, he has also raised the contention that there is a delay in passing the order of externment from the date of issuance of notice and therefore, on both these grounds order of detention is required to be quashed and set aside by setting the petitioner at liberty forthwith.

#. Mr S.S.Patel, learned APP does not dispute the factual aspect to the effect that in the order passed by the appellate authority, there is a mention about the perusal of the FIR but in fact there is no FIR lodged against the petitioner. He, therefore, urged to pass appropriate order in the facts and circumstances of the case.

#. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the order passed by the externing Authority, so also the order passed by the appellate Authority and other papers annexed to the petition.

#. It is true that on having perusal of the notice dated September 25, 2000 and March 3, 2001, there is no mention about the registration of the FIR against the petitioner. The allegations made against the petitioner are general in nature to the effect that he is a strong headed quarrelsome person and his activities are detrimental to the public at large. The order passed by the externing authority as well as the appellate authority does not indicate about the involvement of the petitioner in any criminal case. That fact is only reflected from the order passed by the appellate authority. The appellate authority has unequivocally observed in its order that on having perusal of the notice as well as the original file along with FIR and the statement of the victims, there is a reason to believe that the petitioner is a strong headed and quarrelsome person. When there is no FIR lodged against the petitioner/detenu, then how the appellate authority has seen the copy of the FIR. Therefore, the order passed by the appellate authority is clearly indicative of the fact that the order is passed without application of mind and, on this sole ground, the order of the externing Authority externing the petitioner and that of the appellate Authority confirming the order of externment are rendered invalid and illegal and deserves to be quashed and set aside.

#. For the foregoing reasons, the petition succeeds and

is accordingly allowed. The impugned orders at Annexures-'C' and 'E' to the petition are quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M. Kapadia, J.)

Jayanti*